

WIND FARMS – NOTIFICATION REGIME AND LAND DIVISION

DISCUSSION PAPER

1. Context

The South Australian Government has made a number of changes to Council Development Plans in regards to wind farm developments through a Ministerial Development Plan Amendment (DPA).

There are two matters under consideration in this discussion paper which relate to the changes made through the Ministerial DPA but which are not able to be altered through that process, instead requiring regulatory amendment.

2. Wind Farm Notification Regime

Through the Ministerial DPA, wind farms assessed against Development Plans by Local Councils in sparsely populated areas – principally those zoned Coastal, Rural and Primary Production – will be assigned Category 2 status for the purposes of public notification. The resultant development assessment decision will not be subject to third party appeal except on the grounds of judicial review.

Development in other zones, including Rural Living will remain Category 3 and will be capable of being appealed.

The Government is mindful that Category 2 limits the notification obligation to adjacent land holders and that wind farm developments present some special issues in this regard. For example, a property owner that is not adjacent can have their residence closer to a wind farm than one who is adjacent.

The proposal is to create a specific wind farm notification regime in cases where wind farms are assigned Category 2 status.

Section 38(4)(b) of the *Development Act, 1993* allows for the prescription of a wider class of person than adjacent owners or occupiers to receive notice of a Category 2 development.

It is proposed that all owners or occupiers of land within a five kilometre distance of a wind turbine be notified of a wind farm development application through advertisement in a local newspaper. Adjacent owners or occupiers will be directly notified in the normal way through letter.

Notification through advertisement is recognised as the best form of notification in this instance in order to be certain of capturing all persons within a certain radius.

The five kilometre distance is considered sufficient to capture all persons who are in the vicinity of a proposed wind turbine.

3. Land Division

The intent of the following proposal is to remove the need for unnecessary division of rural land in the case of wind farm developments.

A wind farm lease granted to occupy a portion of a land holding is considered “development” after a six year period under the *Development Act, 1993*. “Development” in this case and described under Section 4 of the Act, refers to the division of land.

Following the six year period, when the lease is classed as “development”, an application for land division needs to be lodged with the relevant planning authority.

This raises a few issues. Firstly, a developer will need to make a separate development application for land division subsequent to the original development application for a change in land use.

Secondly, many Council development plans stipulate, in most rural zones, that land division below a certain size (usually 40 hectares) is non-compliant. This creates a potential conflict in policy intent. It is intended through the Ministerial DPA process to support wind farm development in sparsely populated areas of the state by assigning them as Category 2 developments for the purposes of public notification. If a land division for a wind farm lease is non-compliant, there is the potential that approval will not be granted.

Thirdly, if a land division is awarded for a wind farm lease, at the end of the life of a wind farm a landowner could conceivably be left with a number of separate land holdings on his or her property. This is undesirable for the character of rural type zones.

The proposal is to remove the need to obtain approval for land division in the case of a wind farm lease.

Currently under Schedule 3 of the *Development Regulations, 2008*, acts and activities which do not require approval are listed, including certain types of leases. It is proposed to include an additional clause to exempt leases where the purpose is to create leasehold sites for wind turbines and ancillary equipment.

Development approval for the change in land use and the construction of towers and ancillary structures for wind farms will still be required. The exemption will only prevent the creation of a number of separate land holdings on a rural property.

4. Further Information

Further information on the Ministerial DPA can be obtained www.sa.gov.au/planning/dpas

5. Consultation Arrangements

Comments should be submitted by either email or mail using the details below:

Email: climatechange@dpc.sa.gov.au

Mail: Commissioner for Renewable Energy
Level 17, 31 Flinders St
Education Building
Adelaide SA 5000

The deadline for comment is 13 December 2011